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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1954.

No. 122

BILLIE LOUISE HARRIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Billie Louise Harris, prays that a Writ of Certiorari issue to the United States Court of Appeals for the Seventh Circuit to review the decision of the Court which affirmed the judgment of the United States District Court for the Northern District of Illinois, Eastern Division. A petition for rehearing was denied by that Court on April 23, 1954. The petitioner was tried by the District

Court and was found guilty by the jury of violating Sec. 2312 of Title 18, U.S. Code. The judgment of the District Court sentenced petitioner to two years and six months in the custody of the Attorney General of the United States. A transcript of the record in the case, including the proceedings in said Court of Appeals, is furnished herewith pursuant to Rule 38 of the Rules of this Court.

STATEMENT OF MATTERS INVOLVED.

The petitioner was found guilty by a jury in the District Court of transporting a stolen motor vehicle in interstate commerce with knowledge of its theft, in violation of Sec. 2312, Title 18, U.S. Code.

In order for the Government to prove its case, it was necessary to show that petitioner had knowledge of the stolen character of the motor vehicle when she transported it in interstate commerce. It was presented to the Court of Appeals that the Trial Court erred in permitting the confession of petitioner's co-defendant, stating therein that petitioner had told him the vehicle in question was stolen, to go before the jury without first deleting reference to petitioner therefrom, and that the Trial Court erred in permitting the confession of petitioner's co-defendant to go to the jury in any event, said alleged confession having been obtained from him by duress and as the fruit of his unlawful detention in violation of Rule 5, Federal Rules of Criminal Procedure, Title 18, U.S. Code.

JURISDICTION.

Jurisdiction of this Court is invoked under Section 1254, U.S. Code, Title 28. (Judiciary and Judicial Procedure, Title 28, Chap. 646, Public Law 773, 80th Congress).

The judgment of the United States Court of Appeals for the Seventh Circuit to be reviewed was entered on the 1st day of April, 1954. The order denying the Petition for Rehearing was entered on April 23, 1954.

QUESTION PRESENTED.

Whether petitioner was deprived of a fair trial by the admission into evidence before the jury an alleged confession obtained from the petitioner's co-defendant by duress and as the fruit of his unlawful detention by officers of the Chicago Police Department, acting in concert with Federal officers, where said alleged confession stated in part that petitioner told her co-defendant that the vehicle in question was stolen.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

The petitioner's appeal raises important questions as to the limitations to be placed on Rule 5, Federal Rules of Criminal Procedure, Title 18, U.S. Code, and upon the admissibility for any purpose of evidence secured by Federal officers acting unlawfully.

In the case of *Anderson* v. *United States,* 318 U.S. 350, this Court held that where a confession was obtained as a consequence of the illegal detention of one defendant, not only would his conviction fall, but the convictions of co-defendants implicated in such confession would fall as well. To that extent, the United States Court of Appeals for the Seventh Circuit is in conflict with this Court, said Court of Appeals having determined the same issue contrary to the *Anderson* case.

Wherefore, the petitioner prays that the Writ of Certiorari be issued under the seal of this Court, directed to the United States Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court on a date to be designated, a full and complete Transcript of the Record and proceedings had in this cause, numbered on its docket 10891, to the end that this cause may be reviewed and determined by this Court; that the said judgment of the United States Court of Appeals for the Seventh Circuit be reversed by this Court, and that your petitioner be granted such other and further relief as may be proper.

Respectfully submitted,

FRANK W. OLIVER
Attorney for petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1954.

NO.

BILLIE LOUISE HARRIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI.

OPINION BELOW.

The Opinion of the United States Court of Appeals for the Seventh Circuit in this cause, No. 10891, is reported in *United States* v. *Billie Louise Harris,* decided on April 1, 1954. The Opinion in this case appears at pp. 166 to 171 inclusive in the Record filed herein.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 1254, Title 28, U.S. Code (Judiciary and Judicial Procedure). The judgment of the Court of Appeals was entered and the opinion filed on April 1, 1954. The Court denied a petition for rehearing on April 23, 1954. (Tr. 173).

SPECIFICATION OF ERRORS.

The Court of Appeals erred in ruling contrary to the petitioner on each of the questions as set forth in the Petition.

STATEMENT OF THE CASE.

The petitioner herein was indicted alone in one count charging her with transporting a stolen motor vehicle in interstate commerce, knowing it to have been stolen, in violation of Sec. 2312, Title 18, U.S. Code, and together with a co-defendant, one Bauer, for a like offense, in a second count. The second count was dismissed as to her at the close of the Government's case. A jury returned a verdict against her as to the offense charged in the first count, against her co-defendant as to the offense charged in the second count.

The issue on this appeal arises out of the rulings of the Trial Court in admitting into evidence over petitioner's objection, a confession by petitioner's co-defendant, subsequently repudiated, which was obtained from him by the unlawful activities of Federal officers, said confession containing incriminatory references to petitioner; and the failure of the Trial Court, on petitioner's motion, to strike from the confession of her co-defendant the incriminatory references to her.

ARGUMENT.

The Trial Court erred in admitting into evidence the alleged confession of petitioner's co-defendant, which was inadmissible as to him and incriminatory of petitioner.

The Trial Court erred in not deleting from the confession of petitioner's co-defendant incriminatory references to petitioner.

Petitioner Harris, and her co-defendant, one Bauer, were arrested by officers of the Chicago Police Department on January 25, 1952, at about 8:30 P.M. (Tr. 35) in response to a call from the F.B.I. (Tr. 45). On January 26, Harris, then in nominal custody of the Chicago police made a statement to agents of the F.B.I. (Tr. 69-70). On January 27, Bauer, also in nominal custody of the Chicago Police, made an inculpatory statement when confronted with his wife who was threatened with prosecution for misprision of felony (Tr. 43). The two Federal agents who conducted the interrogations of the defendants were the same two agents who brought Bauer's wife to the place where defendants were confined (Tr. 76). Following Bauer's statement on the 27th, the defendants were held for the F.B.I. until 10:30 A.M. the following day (Tr. 42) when the Federal agents took open custody of them and reduced Bauer's statement to writing in their headquarters (Tr. 71). Defendants were taken before the United States Commissioner at about 2:00 P.M. on January 28th (Tr. 79) nearly three days after their arrest. The written statement of Bauer (Tr. 78) which he repudiated under oath, was admitted into evidence following petitioner's objections to the manner in which it was taken (Tr. 50) and to the inclusion therein of incriminatory references to her (Tr. 72-73).

Petitioner had earlier sought to avoid being prejudiced by Bauer's statement by moving for a separate trial (Tr. 5) which was denied.

It is our contention that the confession of Bauer was inadmissible even as to him, because of the manner in which it was obtained; that petitioner had the power through timely objection, which she made, to bar its admission, and that admission thereof over petitioner's objection deprived her of a fair trial and due process of law. The Court of Appeals concedes in its Opinion that had objection been made to the statement of Harris, it should have been sustained. (Tr. 170-171). *A fortiori,* the statement of Bauer, given under greater personal pressures and confinement of longer duration prior to his being taken before a United States Commissioner, ought not to have been admitted over petitioner's objection. We had believed that this Court disposed of the problem in *McNabb* v. *U. S.,* 318 U.S. 332 and *Upshaw* v. *U. S.,* 335 U.S. 410, both of which require arresting officers promptly to carry their prisoners before an examining magistrate. We further remind the Court that the rule has been codified as Rule 5 (a) Federal Rules of Criminal Procedure, Title 18, U.S. Code.

We contended in the Court below that the case of *Anderson* v. *U. S.,* 318 U.S. 350 gave petitioner the right to raise the issue as to the admissibility and content of her co-defendant's alleged confession. In *Anderson* this Court stated at page 356:

> "The incriminating statement of each petitioner implicated all the others, including those who did not confess. To be sure, the trial court devised a procedure under which the confessions were introduced without mention of the names of the other persons implicated. But their names were in fact revealed in the course of the cross-examination of the confessing petitioners. So also, while the trial judge appeared

> to admit the confessions 'only to be used against the persons who made them,' his charge bound the jury to no such restricted use of the confessions."

In the instant case we do not complain that the Trial Court failed to give the usual instructions, rather, that following the language of this Court in *Krulewitch* v. *U. S.*, 336 U.S. 440, 453:

> "The naive assumption that prejudicial effects can be overcome by instructions to the jury * * * all practicing lawyers know to be unmitigated fiction."

Accordingly, we understand *Anderson* to hold that where a confession is offered which is not admissible as to its maker, for the reasons set forth in *Anderson,* any defendant who is prejudiced by the confession, again for the reasons set forth in *Anderson,* ought to be able by timely objection to bar its admission. We submit that the Court of Appeals for the Seventh Circuit is in conflict with this Court on this point.

The case now before this Court is illustrative of the dangers consequent upon not permitting defendants in petitioner's position to object effectively to the introduction of evidence which, though both prejudicial and incompetent as to such defendant, is received against a co-defendant *although inadmissible even as to him.* The effect of denying petitioner the right to complain, permitted her prosecution *through* her co-defendant, leaving her powerless to meet the prosecution save through the supposed limitations placed upon the deliberations of the jury by "appropriate" instructions.

As the evidence was presented in the Trial Court, the issue which the jury ought to have been called upon to decide was whether petitioner told the truth on the witness stand, or whether the witness who claimed he could identify her told the truth. By admitting into evidence the inadmissible confession of her co-defendant, without delet-

ing therefrom incriminatory references to petitioner, the Trial Court made it impossible for the jury to consider this issue except in a highly prejudiced light.

We respectfully submit that if the decision of the Court of Appeals were permitted to stand, it would provide an easy opening for over-zealous law enforcement agencies to secure convictions in cases where there are multiple defendants by the simple expedient of extorting confessions from some of the defendants, to be used, not against those defendants, but against defendants who do not confess. We do not believe that this Court intended, in deciding the cases cited above, merely to replace an obvious evil with a subtle evil.

CONCLUSION.

We respectfully submit that because upon a point raised upon this appeal for a Writ of Certiorari the Court of Appeals for the Seventh Circuit is in conflict with this Court, the case requires that this Court grant a Writ of Certiorari to the Court of Appeals for the Seventh Circuit, and that upon hearing of the issues, make its decision known.

Respectfully submitted,

FRANK W. OLIVER
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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 122

BILLIE LOUISE HARRIS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 166-171) is reported at 211 F. 2d 656.

JURISDICTION

The judgment of the Court of Appeals was entered on April 1, 1954 (R. 172) and a petition for rehearing was denied on April 23, 1954 (R. 173). By order of Mr. Justice Minton, the time for filing the petition for a writ of certiorari was extended to and including June 7, 1954, and the petition was

filed on that date. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the erroneous admission in evidence of a co-defendant's confession constituted reversible error as to petitioner where the court instructed the jury meticulously both at the time of admission and in its final charge that the confession was admissible only against the co-defendant.

STATEMENT

Following a trial by jury in the United States District Court for the Northern District of Illinois, petitioner was convicted of having on November 25, 1952, unlawfully transported from Kansas City, Missouri, to Chicago, Illinois, a Chevrolet four-door sedan, knowing that it had been stolen, in violation of 18 U.S.C. 2312 (Count 1, R. 3-4, 146). Her co-defendant, Clifford Bauer, was convicted of having unlawfully transported said vehicle on or about January 17, 1953, from Chicago, Illinois, to Indianapolis, Indiana (Count 2, R. 4, 147).[1] Petitioner was sentenced to a term of imprisonment of two years and six months (R. 3). On appeal, the judgment was affirmed (R. 172).

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[1] Petitioner and Bauer were jointly indicted in count 2 (R. 4), but at the end of the Government's case and on its motion, this count was dismissed as to petitioner (R. 8).

The evidence may be summarized as follows:

In accordance with her usual custom on weekdays, Mrs. B. V. Mishler of Kansas City, Missouri, parked her 1951 Chevrolet sedan about 7:50 A. M. on November 25, 1952, in her usual parking lot and went to work. Although she took the car keys with her, the car could be operated without such keys. Within a period of about five minutes a woman, whom the parking lot attendant did not know personally but whom he positively identified as petitioner, got into the car. After telling him that the car belonged to her sister and that she would return for her sister at 5:00 P. M. when her sister finished work, she drove the car out of the lot before the attendant "could say anything." Mrs. Mishler did not know petitioner nor did she give anyone permission on that date to use her car. When Mrs. Mishler returned from work at 4:45 P. M. and found the car gone, she reported the loss to the police. (R. 10-13, 14-20, 23.)

On November 28, 1952, petitioner drove the car to Chicago, where she lived at the Devonshire Hotel (R. 70, 117, 120). At the hotel, she became acquainted with co-defendant Bauer, a bellhop (R. 92, 100, 121). On Sunday, January 25, 1953, Bauer's then common-law [2] wife, Elaine, called the F. B. I. at Chicago and advised them that petitioner, who was then living in an apartment on N. Clarendon, had a car stolen from Kansas City, Missouri (R. 46, 108, 111). The F. B. I. in turn

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[2] They were married on April 11, 1953 (R. 108).

called the Chicago police (R. 38, 45, 59, 74, 75) who found the car in that area and placed it under observation (R. 35). About 8:30 that evening petitioner and Bauer got into the car. After ascertaining petitioner's identity, the police questioned her as to the car's ownership. First she claimed the car belonged to her, but when asked to produce her registration card, she said that the car belonged to a friend who lived in Kansas City, Missouri. (R. 35-36, 46, 53-55, 93-94, 123.) The police then arrested Bauer and petitioner and took them to the Chicago police station (R. 37, 40-41, 45, 46, 55, 56, 93, 123). The defendants remained in the custody of the Chicago police until 10:30 A. M., Wednesday, January 28, 1953, when they were turned over to the F. B. I. (R. 42, 50, 83). During that time, no charge was filed against petitioner or Bauer (R. 49, 50). About 1:30 P. M. on January 28 they were taken before the United States Commissioner (R. 50, 79, 84, 95).

While in the custody of the Chicago police, petitioner and Bauer were questioned by the Chicago police and by the F. B. I. on Monday, January 26, Tuesday, January 27, and Wednesday, January 28 (R. 37-45, 47, 48, 51-52, 57, 58, 62-65). On January 26, 1953, petitioner signed a statement for the F. B. I. in which she denied any knowledge that the car was stolen. She said that one Anthony Morino had loaned her the car for her use indefinitely on November 28, 1952, in Kansas City, Missouri, where she was visiting from November 22

to November 28, 1952. When she returned to Missouri on January 8 and 9, 1953, she saw Morino and he told her that she could still keep the car. (R. 65-70.) Her subsequent testimony at the trial was to the same effect with the additional statement that Morino told her that he had repossessed the car after the owner had defaulted on payments to him (R. 117-121). An F. B. I. investigation in Kansas City, Missouri, failed to locate a Tony Morino (R. 84-85, 86-88).

On the afternoon of Tuesday, January 27, 1953, not in petitioner's presence, Bauer who had previously denied knowledge that the car had been stolen admitted such knowledge (R. 42-45, 51, 52, 55-56, 59, 64, 71-76, 79). On the morning of the 28th, after petitioner and Bauer were turned over to the F.B.I. and before they were brought before the Commissioner, Bauer signed a written statement reading in part as follows (Gov. Ex. 7, R. 78):

> I met Louise Harris around the early part of December. I knew her casually during the month of December. She had a 1951 Chevrolet, green in color, 1953 [sic] Missouri plates, in her possession at the time that I met her. She later told me she stole the 1951 Chevrolet in Missouri before she came to Chicago. She went back to Missouri between January 4, 1953 and January 16, 1953. She returned on the 16th of January.
>
> On January 18, 1953 I accompanied Louise Harris in the 1951 Chevrolet, green in color,

> 1953 Missouri license, to Indianapolis, where we stayed at the Harrison Hotel in Indianapolis, returning to Chicago on the 21st of January.
>
> I had full knowledge that the car was stolen.
>
> * * * * *

On the witness stand, Bauer repudiated his written confession saying that he signed the statement and made the admissions to keep the police from "bothering [his] wife" who, he said, was in a bad nervous state (R. 98-100).

At the time of the admission of the written statement, the court instructed the jury that (R. 77):

> it may be received against the defendant Bauer, and it is not admissible as against the defendant Harris, so just disregard it as to the defendant Harris.

On other occasions, the court instructed the jury that conversations which took place out of the presence of petitioner were not admissible as against her (R. 56, 64).

In its final charge to the jury the court said in part:[3]

> The statement signed by the defendant Clifford Bauer, which was received in evidence,

[3] The final charge to the jury does not appear in the record. We are filing with the Clerk a portion of the charge, which, the United States Attorney for the Northern District of Illinois advises us, is "taken from the master file of the Court Reporter's records, the original of which has been approved by the Judge and filed in the Clerk's office."

was received only against said defendant Clifford Bauer. It was not received as against the other defendant, Billie Louise Harris, and as to said other defendant, Billie Louise Harris, should be completely disregarded.

The statement signed by the defendant Billie Louise Harris, which was received in evidence was received only against said defendant Billie Louise Harris. It was not received as against the other defendant, Clifford Bauer, and as to said other defendant Clifford Bauer should be completely disregarded.

The jury is instructed that statements made by another person, outside of the presence of a defendant, are not evidence as to the guilt or innocence of that defendant. The jury is further instructed that any statements made orally or in writing by the defendant Clifford Bauer or any other person, at a time or times when the defendant Billie Louise Harris was not present, must be completely disregarded by the jury in arriving at its verdict as to Billie Louise Harris.

ARGUMENT

There is no merit in petitioner's sole contention (Pet. 7-10) that the admission in evidence of Bauer's confession constituted reversible error as to petitioner, even though such evidence was admitted subject to repeated and emphatic instructions to the jury that it was not to be considered

against petitioner. Since the confession was properly limited in its effect as evidence it is to be presumed that the jury followed the court's instructions. The presence of these repeated instructions distinguishes this case from *Anderson* v. *United States,* 318 U.S. 350, upon which petitioner relies (Pet. 8-9). In that case, the final charge to the jury lacked the limiting instructions and it was this omission which this Court regarded as significant when it said (*id.* at 356-357):

> * * * while the trial judge appeared to admit the confessions "only to be used against the persons who made them," his charge bound the jury to no such restricted use of the confessions. On the contrary, from what the trial judge told them the jury had every right to assume that in ascertaining the guilt or innocence of each defendant they could consider the whole proof made at the trial. * * *

In addition, unlike here, the *Anderson* case, *supra,* involved 20 defendants charged with conspiracy, eight of whom were petitioners in this Court, and of the eight, six had made the incriminating statements in question. Under those circumstances, a limiting instruction, even if given, might well have been deemed difficult for a jury to apply. In the instant case only two defendants, each charged in a separate count for a separate offense were involved, thus making it easy for the jury to follow the judge's clear and explicit in-

structions. The situation is no different from that presented on any joint trial where a statement is admitted against one person alone, and is unaffected by the issue of whether Bauer's confession was valid or invalid, for in either event it could not be used as evidence against the other defendant.

CONCLUSION

The case involves only the application of settled principles and presents no questions requiring further review by this Court. It is respectfully submitted therefore that the petition for a writ of certiorari should be denied.

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JULY, 1954.

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